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9 IN THE JUSTICE COURTS OF THE STATE OF ARIZONA

10 IN AND FOR THE PRECINCT OF LAKE PLEASANT, COUNTY OF MARICOPA

11 KENT HARDING,

12 Plaintiff,

13 v.

14 JOHN W. STONE and SHIRLEY STONE,

15 Defendants.

Cause No. CV05-03585FD

RESPONSE TO MOTION TO VACATE
WRIT OF RESTITUTION

16 Plaintiff hereby responds to the motion to vacate the Writ of Restitution filed by
17 Defendants.

18 First, this action is untimely. The Writ of Restitution was issued on September 7, 2005,
19 almost two full years before the date of this motion. Judgment in this action has long been final
20 and Defendants' opportunity to appeal the judgment expired five days after the entry of judgment
21 in special detainer, which occurred on August 11, 2005. *See* A.R.S. §§ 12-1178(A) and 12-1179. A
22 request to vacate a judgment, meanwhile, should be filed and a showing of good cause should be
23 provided. *See* Rule 60(c), Ariz.R.Civ.P. Defendants were provided with notice of the August 11
24 court date and were properly served with the complaint and summons. *See* this Court's file and
25 A.R.S. § 33-1377(B).

26 Second, Defendants fail to seek relief which may be granted. A Writ of Restitution, once
issued by the Court and executed by the Constable, cannot be vacated. It may be stayed, but not
vacated, and the stay may be effective only before it has been executed; the only mechanism
through which a Writ may be stayed is by payment of a supersedeas bond. *See* A.R.S. § 12-1179(c).

1 As it was executed in 2005, however, Defendants' relief is impracticable, much less improper.

2 Third, the Writ of Restitution issues without hearing; its authorization for issuance is
3 granted at the time of the entry of judgment. *See* A.R.S. § 12-1178(A).

4 Fourth, and finally, this is yet another attempt by Defendants to re-litigate issues long
5 resolved in the Justice (*see* previous rulings on this litigation), Superior (*see, e.g., Stone v. Harding,*
6 Maricopa County Superior Court cause no. CV2006-050748), and Federal Courts (*see, e.g., Stone v.*
7 *Judge Redfield T. Baum, U.S.D.C. (D.Ariz.)* cause no. CV 2005 2626 PHX ROS).

8 Oral argument is unnecessary on this matter; the Writ of Restitution was issued pursuant
9 to a lawful judgment that became final two years previously.

10 WHEREFORE, Plaintiff respectfully requests this Court deny Defendant's motion.

11 RESPECTFULLY SUBMITTED this day, the 31st of August 2007,

12 LAW OFFICES OF SCOTT M. CLARK, P.C.

13 By 

14 Scott M. Clark, Esq.
15 Paul A. Henderson, Esq.
16 3008 North 44th Street
17 Phoenix, Arizona 85018
18 Attorneys for Plaintiff

17 DECLARATION OF MAILING

18 The ORIGINAL of the foregoing filed this day,
19 the 31st of August 2007, at:

20 Maricopa County Justice Court
21 Lake Pleasant Precinct
22 14264 West Tierra Buena Lane
23 Surprise, Arizona 85374

24 A COPY of the foregoing mailed this day,
25 the 31st of August 2007, to:

26 John and Shirley Stone
20626 North 29th Drive
Phoenix, Arizona 85024
Defendants

By 